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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 51

UNITED STATES OF AMERICA, PETITIONER

v.

ARNO SASCHA JAKOBSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 27–39) is reported at 325 F. 2d 409. The opinion of the district court (R. 22–23) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 22, 1963 (R. 40). A timely petition for rehearing was denied on February 10, 1964 (R. 41). On March 6, 1964, Mr. Justice Brennan extended the time for filing a petition for certiorari to and including March 24, 1964. The petition was filed on March 20 and granted on May 4, 1964 (R. 142–143). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether respondent was exempt from the draft as a conscientious objector on the ground that his opposition to war in any form resulted from his "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" within the meaning of Section 6(j) of the Universal Military Training and Service Act.

2. Whether Section 6(j) is constitutional if it does not permit respondent to qualify as a conscientious objector.[1]

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides in pertinent part:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

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[1] This second issue is discussed in the government's brief in the companion case of *United States* v. *Seeger*, No. 50, this Term.

STATEMENT

After a trial by the United States District Court for the Southern District of New York (a jury having been waived), respondent was convicted of having refused to submit to induction into the armed forces and was sentenced to imprisonment for a year and a day (R. 26). On appeal, the conviction was reversed on the ground that the denial of his claim to exemption as a conscientious objector may have rested on the erroneous ground that he did not believe in a Supreme Being as required by the statute (R. 27–39).

Respondent registered with his local board on September 2, 1953, shortly after reaching his eighteenth birthday. In filling out his classification questionnaire, he made no claim for exemption as a conscientious objector. He did, however, forward to the board, on September 11, a doctor's certificate indicating that he possessed a disabling back ailment. On September 17, he was classified 1–A. He sought and was given student classification until June 1955 and again until June 1956. After he wrote to the board in January 1956 that he had a leave of absence from college and was working full time, he was reclassified 1–A. He was ordered to report for a physical examination on February 27. He brought with him and submitted a doctor's certificate indicating that he still suffered a back disability. However, he was found acceptable for service. On April 18, 1958, the date upon which he was notified of his acceptance, he wrote to the board making, for the first time, a claim as

a conscientious objector and requesting the necessary form (Gov. Ex. 2–21; see R. 121–122).[2]

In filling out the special form for conscientious objectors, respondent submitted a fifteen-page addendum to explain his beliefs (R. 44–55). He stated that he believed in a "Supreme Being" who was "higher than Man," who was the "Creator of Man" in the sense of being "ultimately responsible for the existence of" man, and who was "the Supreme Realty" of which "the existence of Man is the *result*" (emphasis in the original) (R. 44). He said that "as a human being with human limitations I am incapable of knowing anything more about the nature of the Supreme Reality other than the fact that such Reality does exist" (R. 44). He further stated that "religious experience" involved "meditation and contemplation" by which he sought knowledge concerning the ultimate nature of man (R. 44). Respondent brought to this process "reason aided by faith," using the latter word to mean "faith in my

[2] Respondent later explained to the hearing officer that he had delayed making his claim because he had not thought through his views on conscientious objection until he had passed his physical examination, and until then had "frankly hoped I would be 4–F" (R. 122). At his trial, he claimed that six months prior to his physical examination he had requested from the clerk of the board an explanation of the religious qualification for a conscientious objector status, and was told that it was necessary to submit proof of long-standing membership in an accepted pacifist religion, and that it was not until after his physical examination that he was informed, at the offices of the American Friends Service Committee, that there was no such restriction (R. 12–14).

own powers for seeking and recognizing the truth" (R. 44). From his contemplation of the nature of man, he concluded that "men can, with concentrated effort, achieve volition that is not completely determined by heredity and environment" (R. 45). This led him to "two inescapable corrolaries": (1) that man must be "partly spiritual" and therefore "partly akin to the Supreme Reality," and (2) that man must "develop his own values with the use of his d[i]vine gift of reason" (R. 45). Since life, he said, is the most certain thing that exists, being the only thing that is given to man rather than created and arranged by man, it is "sacred" and "a higher value than all the other values" (R. 46). Hence, his "most important religious law" was that "no man ought ever to willfully sacrifice another man's life as a means to any other end" (R. 46).

Respondent offered five specific reasons for his opposition to war:

1. War entails "the unlimited use of violent force" and "the sacrifice and destruction of countless innocent individuals," and hence "it is the method 'war' itself which must be fought if we are to have a lasting peace" (R. 46);

2. In war "the enemy is reduced to a mere abstraction," and "it is incompatible with my most sacred convictions to reduce the killing of concrete human being to a statistical necessity, as I consider all human beings to be special and worthy of serious and special consideration" (R. 46–47);

3. On the one hand, the cause of wars is the "degeneration of an inherently inadequate system of culturally-patterned values," and on the other, war "gives impetus to the very moral atmosphere in which further conflicts can so easily breed" (R. 47);

4. The "ends we all desire do not justify the methods of war" and "the methods of war are not a practical means to those ends" (R. 47);

5. The "better way to bring about a peaceful world is for individuals, whose consciences direct them to do so, to stand against the very core of the problem, by not adopting the techniques of war themselves, and by working in a positive way for peaceful aims instead" (R. 47–48).

In answer to a question as to the source of his training and belief, respondent stated that his beliefs "developed entirely by means of my own active efforts," involving a "conscious allocation of time for active concentration" (R. 48). Going to a city-wide high school made him "feel related to people of all races and religions" (R. 49). Working as a counselor in welfare children's camps showed him "how the effects of love and understanding combined with a positive emphasis were much more satisfactory in the long run than the effects of a 'disciplinarian' approach combined with a negative emphasis on punishment," and it was there that he "first started to cope more or less seriously with the problems" which led to his request for exemption (R. 49). In addition, he received help from certain books that he

read.[3] Respondent concluded this portion of the form by saying (R. 50):

> But above all, I must emphasize that my present beliefs and convictions were developed mainly by means of an active, concentrated effort to think about the problems involved, an effort which included the spending of much time sitting alone and thinking about the problems involved, often with the aid of making notes, scribbles, outlines, etc. It is in this manner that my religious and social thinking has developed in the last few years.

In answer to a question as to the circumstances, if any, in which he believed in the use of force, respondent answered that non-violent force (such as boycott, physical restraint of a child, etc.) might be justifiable. As to the use of violent force, as, for example, to kill a criminal to prevent him from killing, he stated that the criteria that he would want to use were (1) the likelihood of hurting innocent bystanders; (2) whether his actions would be "vengeful and done in anger" or "done sadly and only in order to help"; (3) whether violence could be avoided; and (4) whether the use of violence would lead to more violence and more bloodshed (R. 51). He continued by declaring that the "real question" was where to "draw the line," and that resort to war was

[3] Respondent listed the following: Remarque, *All Quiet on the Western Front;* Sorokin, *The Crisis of Our Age* and *S.O.S.—The Meaning of our Crises;* Koestler, *Reflections on Hanging;* Fromm, *Escape from Freedom, Man for Himself, Religion and Psychoanalysis, The Sane Society,* and *The Art of Loving;* Dostoevski, *Crime and Punishment* and *Notes from the Underground* (R. 50).

one use of force that he would never advocate under any circumstances (R. 51). He expressed the view that even aggression resembling that of the Nazis and Japanese would not justify resort to war. He suggested that if the United States had been pacifist, this would have affected the values of the rest of the world and World War II might not have occurred (R. 50–53).

Up to this point, respondent claimed merely 1–A–O status as a noncombatant (R. 42). In the addendum to the special form for conscientious objectors which he submitted, he stated that he "put [his] major emphasis on positive achievements," and for that reason could "accept a 1–A–O with a clear conscience" (R. 54). However, when he appeared for a hearing before the Local Board on December 9, 1958, he handed in a letter requesting that his claim be changed from a request for 1–A–O to a request for an exemption (1–0), since on further reflection he felt that participation in any form of military service would involve him "in too many situations and relationships that would be a strain on my conscience that I feel I must avoid" (R. 70). He stated that he could not with a clear conscience limit his service in the medical corps to one side of a war; that he would not "give up the moral responsibility for my actions to professional soldiers"; and that his participation would condone an institution "based on fundamental values, convictions, and action-patterns that are so diametrically opposed to my own" (R. 70–71).

Respondent also submitted at that time 43 pages of "notes on religion" to explain further his beliefs (R. 72–115). He started by defining religion as the "*sum and essence of one's basic attitudes to the fundamental problems of human existence*" or, in other words, "the *subjective* attitudes of people to the Givens of Exist[e]nce" (emphasis in the original) (R. 72, 73). He said he believed in "Godness," which he defined as "the Ultimate Cause for the fact of the Being of the Universe," and stated that to deny its existence would be to deny the existence of the Universe, since "anything that Is, has an Ultimate Cause for its Being" (R. 73). He added that questions concerning the nature of Godness are "Speculation," and that in the "non-dogmatic conception of religion" an individual "forms (or accepts) his fundamental attitudes to Life" on the basis of what he knows about "this World"; this represents "the limits of what he, as a human being, can know" (R. 73). He stated that an individual's relationship to Godness exists primarily on the level of "feelings" rather than only on the intellectual level; and that the Self is "felt as something that bears certain, fundamental, *definitive* relationships to things outside of itself" (emphasis in the original), which gives to the individual "a position in the Order of things" (R. 74).

Respondent said that man can feel a relationship to Godness in two directions: "vertically, towards Godness directly" and "horizontally, towards Godness through Mankind and the World" (R. 74). The two feelings "tend to be mutually exclusive," since

"the more one senses a direct, one-to-one relationship to Godness, the less one will sense a concrete relationship to Mankind and to the World, and vic[e] versa" (R. 75). He stated that he rejected the idea of the vertical relationship in favor of the horizontal one, since the vertical feelings imply "a kind of knowledge about the nature of Godness that is unknowable under the human Limits," and because, "for the sake of Spiritual Growth,[4] they induce one to assume an attitude towards mundane events that make such Growth impossible" (R. 75–83). It was his belief that "the more closely one relates to the Universals and Essentials in Life, the nearer one comes, psychically, to that essential Order in the Universe that is so closely connected with the concept of Godness" (R. 83). He further stated that this was also the basis for his "religious conscience," since to him a "man is obeying a 'higher law' than a social or legal one when he is basing his actions on attitudes that stem most directly from the way he feels about the basic Givens in Life" (R. 83).

With the foregoing as basic postulates, respondent sought to show how these beliefs led him to conscientious objection. To him "the basic problem of religion" was "the choice with which every individual is confronted of either Accepting or Rejecting the Order of the Universe as it presents itself to him"

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[4] Respondent defined "Spiritual Growth" as "a dynamics that reaches towards Wisdom," defining "Wisdom" as "a dynamics that reaches toward Truth: Truth with the capital T emphasized to connote the sense of Truth of the unity of things" (R. 80).

(R. 86). His choice was the "psychic Acceptance of Life" (R. 90–107), which necessarily was inseparable "from the attitudes that are commonly called by the terms 'Brotherliness' and 'Altruism'" (R. 95). All life involved both the "basic Oneness and Similarity of Essence" and the "Inter-extensiveness of Change" (R. 97, 98). Hence the goals that an individual chooses are "relative" only in the sense that each person must choose them out of his own personal beliefs; they are "absolute" in the sense that they are binding on conscience and in the sense "that any choice an individual makes for himself is also implicitly made for the whole world" (R. 106). A "Reverence for Life" was "one of thee most fundamental components" of his conscience and every person's life was worthy of special consideration (R. 109). He said (R. 108–109):

> Wilful killing presupposes the Rejection of Life—the Rejection of Someone's Life for purposes that are supposedly greater than that Life itself. And there are no such purposes. Every killing is a Fratricide, and every Fratricide is a psychical suicide. If there are purposes that are greater than ones Brother's Life, then there are purposes that are greater than ones own life. And how can one psychically Affirm the basic Blessedness of the Gift of Life and still feel that there are human purposes that are greater?

While respondent said that he opposed "Evil," he felt that "the history of bloodshed—especially that of the recent past—has clearly demonstrated that violence is a poor answer to Evil" (R. 110). The only

answer to the problem is by "making examples of ourselves by our own refusal to commit or condone the prevalent socially-patterned Evils" and by "the development of our own knowledge of Non-violent Resistance as an active force" (R. 111). Respondent concluded with a reiteration of his arguments why war cannot be condoned (R. 109–115). In a final addendum, he stated that he had tried to show that his objection was rooted in "religion," but that in any event, it "springs from the same Source as religion, answers the same fundamental questions as religion, and produces attitudes that seem to be as binding on the conscience as religion" (R. 115).

The Local Board found that respondent's views were essentially sociological or philosophical or "at most a merely personal moral case," were "not based upon religious training & belief," and did "not reflect duties as dictated by a supreme being superior to those arising from any human relation" (R. 116). It concluded that respondent was available for non-combatant military service and classified him 1–A–O (R. 117).

On appeal, the matter was referred to the Department of Justice. In a statement submitted to the hearing officer (R. 127–129), respondent defined "religion" as consisting "of a deeply-felt and consistent set of values, based on fundamental attitudes to exist[e]nce, which are rooted so firmly in an individual's consciousness as to constitute in him a moral imperative of the kind known as 'conscience'" (R. 127). He said that "Godness stands for ultimate meaning,

ultimate explanation, and ultimate source of value" (R. 127). He rejected both atheism and theism but found the latter "a thousand times nearer the truth" (R. 128).

The hearing officer found respondent to be vague as to the origin of his belief with respect to conscientious objection and took note of his delay, first in filing his claim and then in changing it from a claim for 1–A–O classification to a claim for 1–O classification. He reported that respondent's answers to his questions threw no further light upon his religious training and beliefs. The hearing officer concluded that respondent's opposition to military service was not by reason of his religious training and belief but was based upon a personal moral code and that he is not sincere in his claim. He therefore recommended that the appeal not be sustained (R. 122). The Department of Justice so found and recommended to the Appeal Board (R. 120–123).

Respondent submitted an answer to the findings of the Department of Justice in which he attempted to show that his views were based upon religious training and belief, and that they were sincere (R. 130–135). He stated first that his position was a religious one because of "its all-embracing and transcendant character in my being" (R. 130). He continued (R. 130–131):

> I do not hold these convictions because I have intellectually concluded that they are objectively a good position to take; I hold them because I find that I *must* live in harmony with my inner light. They do not represent a super-

> ficial outlook that I have cerebrally chosen; they represent a position that is grounded in the deepest layers of my consciousness. The commitments of this position are transcendant in that they represent to me an absolute moral imperative, and constitute what I feel to be my deepest obligations in life. I feel that I, like everyone else, have many obligations in many different directions: obligations to friends, to law, to society, to humanity. But I also feel that when these obligations from without conflict in their demands with my inner commitments, I have no choice but to choose in accordance with my deeper obligations and to take whatever consequences ensue. [Emphasis in the original.]

He also stated that his "Religious Training" was to have "read widely from Plato to Gandhi, meditated consciously on many problems, and lived and experienced life for twenty-four years" (R. 132). On the question of his sincerity, he stated that "I admittedly made little attempt to consistently face the problem of compuls[o]ry military conscription until the Fact was practically staring me in the face * * *. [I]nstead of facing up to my responsibility to form a well thought out position with respect to the fact that military service would be a fundamental rejection of my values, I childishly hoped and led myself to believe that my back condition would suffice to make a difficult task unnecessary" (R. 132–133). He also explained that, having been misinformed by the clerk as to the legal validity of his claim, it was not until after his physical examination that he felt satisfied

that his religious position, although unorthodox, would qualify him under the law to an objector's classification; "[u]p to that point I thought that the government offered me no alternative to prison" (R. 133). As to his initial request for a 1–A–O classification, he stated that his position, "though essentially religious and capable of standing on that basis alone, was one which had so many consequences on other levels of inquiry, that an individual taking it had a moral responsibility to hold a full and well-thought-out position on these levels," and that he then felt that he "could fulfill only part of that requirement" (R. 133–134). Therefore, this "confusion, plus a little fear, made me feel at that point that I might be able to live with myself with a 1–A–O classification" (R. 134).

The Appeal Board classified respondent 1–A (R. 136). Respondent thereupon took an appeal to the Director of Selective Service stating that his reclassification as 1–A was an unhappy and unjust result. He inquired whether it would not "be possible for Selective Service to consider me to be useless as a prospective military entity" and whether there was "no way that I could serve my society and mankind in a non-military manner that would represent a better alternative than a prison sentence" (R. 136–137). The Director declined to take further action. Respondent reported for induction but refused to be inducted (R. 139–140).

The district court found respondent guilty of having refused to submit for induction. It first recog-

nized that it was "not altogether clear whether the hearing officer's finding that respondent was insincere has been adopted by the Board but observed that it was necessary in order to convict under this Court's decision in *Sicurella* v. *United States,* 348 U.S. 385, 392, to sustain all the grounds given for the classification (R. 23, note 2). The court then held that, on the record as a whole, it could not say "that there was no basis in fact for the Appeal Board's finding of insincerity" (R. 24). The district court also applied the statutory definition of "religious training and belief" set out in Section 6(j) and concluded that "the Board was fully warranted in determining that defendant's views were not based on religious training and belief and in denying a 1–O classification on that ground" (R. 25).

The courts of appeals, in reversing the conviction, noted that, if Section 6(j) were construed to deny exemption as conscientious objectors to persons holding views of the sort held by respondent, its constitutionality would be doubtful (R. 32–38). It also observed that it was unlikely that Congress intended to make theological distinctions between different concepts of a Supreme Being (R. 38). The court concluded that respondent believed in a Supreme Being and, therefore, that his opposition to war was founded on "religious training and belief" as defined by Section 6(j). With respect to the alternate ground—lack of sincerity—the court of appeals helds that there was "basis in fact" to support such a finding (R. 30–31). Since, however, the Appeal Board had

not indicated whether its classification rested on the valid or invalid findings, or both, the court of appeals held that the Board's classification could not stand (R. 39).

SUMMARY OF ARGUMENT

Section 6(j) grants an exemption to all conscientious objectors whose objections to military service have a religious basis. It carefully excludes those whose objections lack such basis. The history of this provision and of predecessor statutes shows no less convincingly that the requirement of religious training and belief was written into the law for the specific purpose of distinguishing between views derived from one's sense of obligation to one's fellow man and views based upon belief in relation to a Supreme Being (however conceived or defined) imposing duties superior to all human relationships.

In the companion case of *United States* v. *Seeger*, No. 50, we have dealt with the constitutional question whether Congress may grant an exemption to persons whose objections to military service are based upon a conflicting religious obligation without extending a similar grant to those who object on political, sociological, or philosophical grounds. We there argue that this is a reasonable and permissible accommodation between the needs of national defense and the freedom of religion guaranteed by the First Amendment. Assuming that in *Seeger* the Court rejects the constitutional challenge to the statute, the issue in the instant case narrows to the question whether the selective service authorities had some basis in fact

for concluding that respondent's objections were grounded essentially upon a personal moral code rather than upon a religious obligation. Respondent's explanation of his views is not free from conflict and ambiguity, and the determination whether they meet the statutory test presents a close and difficult question. Taking into account the prerogatives of the Selective Service authorities in assaying the facts and the very limited scope of judicial review in this area, we believe that the administrative determination should not have been disturbed.

ARGUMENT

I

SECTION 6(j) GRANTS AN EXEMPTION TO ANY CONSCIENTIOUS OBJECTOR WHOSE VIEWS ARE BASED ON AN OBLIGATION SUPERIOR TO THAT ARISING FROM ANY HUMAN RELATIONSHIP

A. THE BACKGROUND OF SECTION 6(j)

In the long history of exemptions from military service for conscientious objectors in the United States, we know of no indication of any attempt by Congress to distinguish between or among religious beliefs.[5] This history forms the background of Section 6(j) and helps to explain its meaning. It is most unlikely that Congress would have radically changed the basis of the exemption without any indication that it intended to do so.

Thus, the resolution of the Continental Congress stating that it did not intend to interfere with the

[5] See the history set forth at length in the government's brief in *United States* v. *Seeger*, No. 50, this Term, pp. 41–72.

conscience of those who objected to war referred to all those "who from Religious Principles cannot bear Arms in any case." I *Selective Service System Monograph No. 11, Conscientious Objection* (1950) 33–34. In 1776, the Maryland Convention, in remitting fines assessed for failure to enroll in the militia, recommended a distinction between those who refused "from religious principles" and from other reasons. *Id.* at 37. The proposed constitutional amendment of James Madison would have exempted any "person religiously scrupulous" from bearing arms. I Annals of Congress 749.

The House of Representatives passed a bill during the War of 1812 to exempt Christian sects conscientiously opposed to bearing arms from the call of the militia. 28 Annals of Congress 774–775. However, at that time there were probably no non-Christian religious sects in the United States which had such conscientious scruples. Thus, the sponsor of the amendment cited only Christian religions as taking this position. *Id.* at 772–774.

During the Civil War, North Carolina gave an exemption from the militia for all religious conscientious objectors and Virginia gave an exemption to any person belonging to a church with those tenets. *Monograph No. 11*, pp. 43–44. The Confederacy exempted from conscription Quakers, Dunkards, Nazarenes, and Mennonites because these were the pacifist churches at that time. Public Laws of the Confederate States of America, 1st Cong., 2d Sess., ch. 45. The Union exempted persons who belonged to any

religious sects conscientiously opposed to bearing arms and who themselves were opposed. 13 Stat. 9. See also, 63 Cong. Globe 204–208, 576.

The Selective Draft Law of 1917 also exempted all members of religious sects which were opposed to war in any form, provided that the individual claimants were themselves [illegible]arly opposed. 40 Stat. 78. Again, the debate gave no indication that Congress intended to distinguish between different religious beliefs. See 55 Cong. Rec. 1473–1479.

The Selective Training and Service Act of 1940 broadened the exemption by making it unnecessary to belong to a pacifist religious sect so long as the person's own opposition to war was based on "religious training and belief." 54 Stat. 889. The witnesses who supported this exemption drew no distinctions among religious beliefs; they supported an exemption for all who were torn between the obligations they owed to their religion and those they owed to their government. See the government's brief in *United States* v. *Seeger*, No. 50, this Term, pp. 60–69.

In short, American history shows a consistent pattern of exempting persons from military service who were conscientiously opposed to war because of religious conviction, regardless what their other religious views might be. At times, to be sure, the exemption was limited to members of religious sects holding such views; but no distinctions were then made according to the theology of these sects. If Congress, in defining "religious training and belief" in the 1948 statutes, had denied exemption to some religious con-

scientious objectors while granting it to others, the break with the past would have been a sharp one. Therefore, in the absence of any other indication, Congress presumably intended to continue its historic policy of not distinguishing among religious beliefs. In fact, as we now show, Congress quite clearly indicated that it intended no departure.

B. THE IMMEDIATE HISTORY OF SECTION 6(j)

The Selective Training and Service Act of 1940 granted an exemption to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war." 54 Stat. 889. Thus, Congress explicity provided that only conscientious objectors whose views were based on religious convictions were entitled to an exemption. Moreover, the legislative history underlying that statute shows that Congress rejected suggestions that all conscientious objectors be exempt. See Brief for the United States in *United States* v. *Seeger,* No. 50, this Term, pp. 67–69.

Nevertheless, the Court of Appeals for the Second Circuit concluded that Congress intended, by the term "religious," to include "a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse." *United States* v. *Kauten,* 133 F. 2d 703, 708. On the other hand, the Ninth Circuit rejected the Second Circuit's view and held that "religious training and belief" was written into the statute for the specific purpose of distinguishing between a con-

scientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon "an individual's belief in his responsibility to an authority higher and beyond any worldly one." *Berman* v. *United States*, 156 F. 2d 377, 380, certiorari denied, 329 U.S. 795. It then went on to quote (*id.* at 381) from the dissenting opinion of Chief Justice Hughes (with Justices Holmes, Brandeis, and Stone concurring) in *United States* v. *Macintosh*, 283 U.S. 605, 633–634: "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation."[6]

In 1948, in Section 6(j) of the Universal Military Training and Service Act, Congress confirmed the decision in *Berman* by writing that holding explicitly into the statute. The Senate committee stated (S. Rep. No. 1268, 80th Cong., 2d Sess. 14):

> This section reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 act. Exemption extends to anyone who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service (See *United States* v. *Berman*, 156 F. (2d) 377, certiorari denied, 329 U.S. 795).

The present language, as we have noted, provides for an exemption for any person whose objection to war

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[6] This opinion was in effect adopted by this Court in *Girouard* v. *United States*, 328 U.S. 61, which overruled *Macintosh*.

in any form is based on his "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." The first half of the requirement is taken verbatim from Chief Justice Hughes' opinion in *Macintosh* with a single variation: the opinion states that religion requires belief in "God" while the statute replaces "God" with the words "a Supreme Being." The second half—the rejection of sociological and moral views as the equivalent of religious belief—comes directly from *Berman*. See the opinion below, R. 34.

There can be no question then that Congress deliberately adopted as its test the concept expressed in *Berman:* that religion is "an individual's belief in his responsibility to an authority higher and beyond any worldly one." It did not seek to define the form or nature of this higher authority. In place of the word "God," it used the term "a Supreme Being." There is thus every indication that it did not propose to pick and choose as among various religious beliefs. At the very least, as the court below held (R. 38), this is a reasonable construction of the statute and one which may properly be adopted to avoid the constitutional doubts which would arise from granting exemptions to persons holding certain religious views and not to those holding others.

II

THE SELECTIVE SERVICE AUTHORITIES WERE WARRANTED IN FINDING THAT RESPONDENT'S OPPOSITION TO WAR IS NOT BASED ON AN OBLIGATION SUPERIOR TO THAT ARISING FROM ANY HUMAN RELATIONSHIP

We have shown above that Section 6(j) exempts all persons who are conscientiously opposed to participation in war in any form and who deem this opposition a duty "superior to those arising from any human relation." The Local and Appeal Boards found that respondent did not come within the exemption. It remains only to consider whether this determination has sufficient support, under the standards laid down by this Court, to be sustained. While the issue is admittedly a close one, we believe, contrary to the court below, that the finding was adequately supported by the evidence.

A. Respondent's contention is that he was erroneously classified as I–A by the Local and Appeal Boards. Congress has provided that decisions of these boards as to classification shall be "final." Universal Military Training and Service Act, Section 10(b)(3), 50 U.S.C. App. 460(b)(3). This Court has made clear that these provisions limit very narrowly the scope of judicial review. Thus in *Estep* v. *United States*, 327 U.S. 114, 122–123, it said of the 1940 Act:

> The provisions making the decisions of the local boards "final" means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review

> which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classifications made by the local boards was justified. The decisions of the local board made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant.

This test was approved and applied by the Court in *Cox* v. *United States,* 332 U.S. 442, both by the plurality opinion of Mr. Justice Reed and by the dissenting opinion of Mr. Justice Douglas (joined by Mr. Justice Black). *Id.* at 448–449, 455.[7] The standard of *Estep* was applied under the present statute to a decision of a local board in *Dickinson* v. *United States,* 346 U.S. 389, 394. And later in *Gonzales* v. *United States,* 364 U.S. 59, 65, the Court held that it was applicable to appeal boards.[8] See also *Eagles* v. *Samuels,* 329 U.S. 304, 311. Thus, the standard governing this case is whether the Appeal Board had *any* basis in fact for its classification.

B. The beliefs of respondent are complicated and not readily susceptible of analysis. On the one hand, respondent's statements of his credo often suggested an obligation going beyond his obligation to other human beings. For example, he stated that he believes

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[7] Mr. Justice Murphy, joined by Mr. Justice Rutledge, dissented on the ground that this was too narrow a standard of judicial review. 332 U.S. at 457–458.

[8] The dissenting opinion in *Gonzales* of Chief Justice Warren was on another ground. See 364 U.S. at 65.

in a "Supreme Being," who is "higher than Man," who was the "Creator of Man" in the sense of being "ultimately responsible for the existence of" man, and who was "the Supreme Reality" of which "the existence of Man is the *result*" (emphasis in the original) (R. 44). He said that man must be "partly spiritual" and therefore "partly akin to the Supreme Reality," and that he must "develop his own values with the use of his d[i]vine gift of reason" (R. 45). Life is the most certain thing that exists and it is "sacred" and "a higher value than all the other values" because it was given to man rather than created by man (R. 46). Respondent also said that he believed in "Godness" (which he defined as "the Ultimate Cause for the fact of the Being of the Universe") and that to deny its existence "is equivalent to denying the fact of the Being of the Universe," since "anything that Is, has an Ultimate Cause for its Being" (R. 73).

On the other hand, respondent made statements which suggested that "the Supreme Reality" was nothing more than an appreciation of the importance of man's obligations to his fellow man. He said that "religious experience" means contemplation concerning the ultimate nature of man (R. 44). He believes that the "most important religious law" is that "no man ought ever to wilfully sacrifice another man's life as a means to any other end" (R. 46). He is also of the view that it is impossible to know the nature of the "Supreme Reality" or "Godness" and that an individual "forms (or accepts) his fundamental attitudes to Life" on the basis of what he knows about "this World," which represents "the

limits of what he, as a human being, can know" (R. 44, 73). While agreeing that theism was much closer to the truth than atheism, he said that he disagreed with the former as well (R. 128). He based his opposition to war on sociological and political judgments that war harms humanity (R. 46–48, 51–52).

On the basis of this evidence, the Local Board found that respondent's views were essentially sociological or philosophical or "at most a merely personal moral case," were "not based upon religious training & belief," and did "not reflect duties as dictated by a supreme being superior to those arising from any human relation" (R. 116). The hearing officer and the Conscientious Objector Section of the Department of Justice agreed with the Local Board (R. 122–123). And, on the basis of the Department's recommendation that the exemption should be denied on two grounds—that respondent was not sincere in his beliefs and that, in any event, his convictions were not based on religious training and belief—the Appeal Board denied the appeal. The court of appeals, although it held (R. 30–31) that the evidence would sustain a finding of insincerity, correctly observed that it cannot be ascertained on which of the two grounds the Appeal Board relied. It therefore assumed that the Board relied on the ground that respondent's views were not religiously based.

We believe that there is sufficient evidence to sustain the findings of the Local and Appeal Boards. Admittedly, some of the evidence suggests that respondent does believe in an obligation superior to that owed his fellow human beings. There is,

however, other evidence pointing the other way. While, as an initial matter, this Court might decide that the exemption applies to a person holding respondent's beliefs, we do not think that it can fairly be said that there is no basis in fact for the determinations of the Selective Service authorities. Consequently, under the standard of judicial review laid down repeatedly by this Court, the conviction should stand.

C. The court of appeals observed that respondent's views were similar to those of Paul Tillich, the distinguished Protestant theologian (R. 36-38). We would not question the proposition that one subscribing to Professor Tillich's views is a believer in religion both in the sense of the First Amendment and of the relevant statute. Nor would we deny that there may be points on which there is some suggestion of correspondence between Professor Tillich's views and respondent's. There are also points of difference and many areas of ambiguity. To attempt such a comparison, we believe, is to introduce unnecessary complications which contribute little to the resolution of the issue. The approach of the Selective Service authorities—one which we defend as correct—was to compare respondent's declarations with the statute itself. As we have argued above, such a comparison affords basis in fact for a finding that his views do not meet the standard, *i.e.*, that they rest essentially upon a concept of man's proper relation to his fellow man, rather than upon an obligation to a Supreme Being.

The court of appeals also relied heavily on the principle that statutes should be interpreted to avoid serious constitutional issues (R. 38). However, the constitutionality of Section 6(j) is before this Court in *United States* v. *Seeger*, No. 50, this Term. It is clear that the pacifist involved in that case does not come within the exemption provided by the statute, no matter how broadly it is defined. Therefore, however one characterizes the views of respondent Jakobson, this Court is squarely faced with the issue whether Congress may properly grant an exemption to pacifists whose views are based on their religion and refrain from according a like exemption to those whose pacifism is grounded upon "essentially political, sociological, or philosophical views or a merely personal moral code." Our argument on that issue is elaborated in our *Seeger* brief in which we urge that Congress has provided an exemption for all persons who are religious in the essential sense that that term is used in the First Amendment and that Section 6(j) is a reasonable and proper accommodation of the needs of national defense and of freedom of religion. If we are correct in our constitutional argument, the only question to be decided here is whether respondent Jakobson comes within the statute, *i.e.*, whether his objections to military service are religious objections or, more accurately stated, whether the Board had some basis in fact for finding that they are not. We submit that the administrative resolution of that issue was a permissible one and accordingly should not have been disturbed.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be reversed.

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SEPTEMBER 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964